

In the Matter of Merchant Mariner's Document No. Z-769773 and all other Seaman Documents  
Issued to: ELLIOT COSTELLO

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1183

ELLIOT COSTELLO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 code of Federal Regulations 137.11-1.

By order dated 5 February 1960, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for six months upon finding him guilty of misconduct based on his plea of guilty to a single specification. The specification alleges that while serving as an able seaman on the United States SS EXANTHIA under authority of the document above described, on or about 25 December 1959, Appellant assaulted a member of the crew, Emilio F. Maclara, with a dangerous weapon (a broken beer bottle) while they were ashore in a bar at Piraeus, Greece.

At the hearing, Appellant was not represented by counsel. In explanation of his plea, Appellant voluntarily stated that since Maclara had his hand in a pocket when he started to insult Appellant, he thought that Maclara had a knife and was going to attack Appellant so he broke a beer bottle and held it close to Maclara's face in order to deter him; Appellant did not intend to injure Maclara but he accidentally received a slight cut on the cheek from the beer bottle.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of six months.

Appellant has no prior record during twelve years' service on merchant vessels of the United States

On appeal, it is urged that Appellant's conduct was justified on the basis of self-defense because of a prior threat by Maclara against Appellant and Maclara's belligerent behavior on this occasion; the suspension ordered is too severe in view of Appellant's prior clear record and the extreme provocation by Maclara; the conclusion that Appellant was guilty of assault is inconsistent with the Examiner's acceptance of Appellant's version of the incident.

APPEARANCE: Standard, Weisberg, Harolds and Malament of

New York City by Arthur B. Cornfield, Esquire,  
of Counsel.

### OPINION

Several prior appeal decisions of the Commandant which are cited by Appellant on appeal are not in point because pleas of not guilty were entered in all of them except one and the latter did not involve an offense of assault. Hence, the others were contested cases requiring evidence on behalf of the Government. In the case under consideration, proof was not necessary since Appellant entered a plea of guilty to the specification alleging assault with a dangerous weapon.

Another matter to consider in connection with Appellant's plea is whether his unsworn statements in explanation were inconsistent with his plea so as to require the Examiner to change the plea to not guilty. Appellant did not state he was threatened by Maclara at this time or that he took out a knife which Appellant "feared" Maclara had in his pocket. In the absence of these factors, there is not adequate basis for claiming that self-defense justified holding the jagged edge of a broken bottle against Maclara's face. A person's hand in his pocket and a threat at some earlier time are too speculative to justify the drastic action taken by Appellant whether or not he did, in fact, fear an attack by Maclara with a knife. On the basis of Appellant's own version of the incident, it is my opinion that any fear by him, of great bodily harm, was unreasonable under the circumstances. Therefore, Appellant's explanation is considered to have been consistent with his plea of guilty.

I think the seriousness of the offense alleged warrants the six months' suspension regardless of the mitigating circumstances. The fact that Maclara was injured to any extent is a matter in aggravation of the offense of assault. If Appellant had pled not guilty, other matters increasing the gravity of the offense might have been produced in evidence.

### ORDER

The order of the Examiner dated at New York, New York, on 5 February 1960, is  
AFFIRMED.

J. A. Hirshfield  
Vice Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D.C., this 28th day of July, 1960.